

1968  
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CANADIAN WAREHOUSING }  
 ASSOCIATION ..... }

APPELLANT;

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Combines—Transportation and storage of household goods—Whether included in definition of “article” in the Act—Combines Investigation Act, R.S.C. 1952, c. 314, ss. 2(a), 32(1)(c), 32(2), as amended by 1960 (Can.), c. 45, ss. 1, 13—Exchequer Court Act, R.S.C. 1952, c. 98, s. 18(1)(g).*

*Jurisdiction—Supreme Court of Canada—Question of law submitted to Exchequer Court by agreement between parties—Whether answer binds “rights in future”—Exchequer Court Act, R.S.C. 1952, c. 98, s. 83.*

The appellant association represents some 300 firms engaged in the business of transporting and storing household goods. By an agreement in writing between it and the Crown, made pursuant to s. 18(1)(g) of the *Exchequer Court Act*, that Court was asked to determine the following question: “Subject to section 32(2) of the *Combines Investigation Act* is a person who conspires, combines, agrees or arranges with another person to prevent, or lessen, unduly competition in the storage or transportation of household goods, guilty of an offence under section 32(1)(c) of the *Combines Investigation Act*?” The Exchequer Court answered the question in the affirmative, and the association was granted leave to appeal to this Court.

*Held:* The appeal should be dismissed.

This Court had jurisdiction to hear the appeal. As a direct result of the judgment of the Exchequer Court, it is no longer open to the appellant to contend in other judicial proceedings that the storage or transportation of household goods does not come within the purview of s. 32(2) of the Act. Such a result binds substantial “rights in future” of the appellant within the meaning of s. 83(b) of the *Exchequer Court Act* which enacts that an appeal from a judgment of the Exchequer Court lies when the action, suit, cause, matter or other judicial proceeding relates “to any matter or thing where rights in future might be bound”.

As to the merits, household goods are “articles” within the definition of that word in s. 2(a) of the *Combines Investigation Act*, as being commodities “that may be the subject of trade or commerce”. The word “article” does not apply only to commodities in the stream of commerce. If Parliament had intended that commodities that are actually in the stream of commerce only would be articles within the meaning of the definition, the word “is” would be expected to be found instead of “may be”.

*Coalition—Transport et entreposage de meubles de maison—Sont-ils visés par la définition du mot «article» dans la loi—Loi relative aux*

\*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Pigeon JJ.

*enquêtes sur les coalitions*, S.R.C. 1952, c. 314, art. 2(a), 32(1)(c), 32(2), amendée par 1960 (Can.), c. 45, art. 1, 13—*Loi sur la Cour de l'Échiquier*, S.R.C. 1952, c. 98, art. 18(1)(g).

*Jurisdiction—Cour Suprême du Canada—Question de droit déferée à la Cour de l'Échiquier par une entente entre les parties—La réponse se rattache-t-elle à des «droits futurs»—Loi sur la Cour de l'Échiquier*, S.R.C. 1952, c. 98, art. 83.

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L'association appelante représente quelque 300 sociétés commerciales dont l'entreprise consiste à faire le transport et l'entreposage de meubles de maison. L'association et la Couronne ont convenu par écrit, conformément à l'art. 18(1)(g) de la *Loi sur la Cour de l'Échiquier*, que la question suivante soit déterminée par la Cour: «Sous réserve de l'art. 32(2) de la *Loi relative aux enquêtes sur les coalitions*, est-ce qu'une personne qui complote, se coalise, se concerte ou s'entend avec une autre pour empêcher ou diminuer indûment la concurrence dans l'entreposage ou le transport de meubles de maison, est coupable de l'infraction prévue à l'art. 32(1)(c) de la *Loi relative aux enquêtes sur les coalitions*?». La Cour de l'Échiquier a répondu affirmativement à cette question, et l'association a obtenu la permission d'en appeler à cette Cour.

*Arrêt*: L'appel doit être rejeté.

Cette Cour a juridiction pour entendre l'appel. Comme conséquence directe du jugement de la Cour de l'Échiquier, l'appelante ne peut plus soutenir dans d'autres procédures judiciaires, que l'entreposage ou le transport de meubles de maison ne tombe pas sous la portée de l'art. 32(2) de la *Loi*. Un tel résultat se rattache à des «droits futurs» substantiels de l'appelante dans le sens de l'art. 83(b) de la *Loi sur la Cour de l'Échiquier* qui déclare qu'il y a appel d'un jugement de la Cour de l'Échiquier lorsque l'action, poursuite, cause, affaire ou autre procédure judiciaire se rapporte à «une affaire ou chose à laquelle peuvent se rattacher des droits futurs».

Sur le fond, les meubles de maison sont compris dans la définition du mot «article» de l'art. 2(a) de la *Loi relative aux enquêtes sur les coalitions* à titre d'articles «susceptibles de faire l'objet d'échanges ou d'un commerce». Le mot «article» ne s'applique pas seulement aux articles qui sont actuellement dans le commerce. Si telle avait été l'intention du Parlement, on trouverait les mots «qui font» au lieu de «susceptibles de faire».

APPEL d'un jugement du Juge Gibson de la Cour de l'Échiquier du Canada<sup>1</sup>, en réponse à une question de droit concernant l'application de la *Loi relative aux enquêtes sur les coalitions*. Appel rejeté.

APPEAL from a judgment of Gibson J. of the Exchequer Court of Canada<sup>1</sup>, in answer to a question of law as to the application of the *Combines Investigation Act*. Appeal dismissed.

<sup>1</sup> [1968] 1 Ex. C.R. 392, 2 C.R.N.S. 204, 54 C.P.R. 35.

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*Keith E. Eaton and Brian A. Crane*, for the appellant.

*C. R. O. Munro, Q.C.*, and *S. M. Leikin*, for the respondent.

The judgment of the Court was delivered by

PIGEON J.:—By agreement in writing made as contemplated in sub-para. (g) of s. 18 (1) of the *Exchequer Court Act*, the parties, after stating that “the transportation and storage of goods commonly described as household goods, being goods owned by householders and used in their households, is a substantial business . . .”, have submitted to the Exchequer Court of Canada the following question:

Subject to section 32(2) of the *Combines Investigation Act* is a person who conspires, combines, agrees or arranges with another person to prevent, or lessen, unduly, competition in the storage or transportation of household goods, guilty of an offence under section 32(1)(c) of the *Combines Investigation Act*?

The question was answered in the affirmative by Gibson J. An appeal is now brought to this Court by leave granted by Fauteux J. under s. 83 of the *Exchequer Court Act* as relating to a “matter or thing where rights in future might be bound”.

At the hearing, argument was heard first on the question of jurisdiction because, as far as could be determined, this appeared to be the first case of an appeal under such circumstances.

A declaratory judgment is undoubtedly binding on the parties as *res judicata*, not merely by application of the doctrine of *stare decisis*. As a direct result of the judgment of the Exchequer Court it is no longer open to the appellant to contend in other judicial proceedings that the storage or transportation of household goods does not come within the purview of s. 32(2) of the *Combines Investigation Act*. In considering whether such a result binds “rights in future”, it must be observed that when what is presently sub-para. (b) of s. 83 of the *Exchequer Court Act* was first enacted (1887, 50-51 Vict., c. 16, s. 52), it read as follows:

- (b) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents or such like matters or things where the rights in future might be bound.

The words "such like" explicitly required the application of the *noscitur a sociis* rule as they did at that time in s. 29 of the *Supreme and Exchequer Courts Act*, R.S.C. 1886, c. 135. However, Parliament amended in a different manner the two provisions after Taschereau J. (as he then was) had said of s. 29, in *Gilbert v. Gilman*<sup>2</sup>:

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we are asked to read this section as if it read "Or in any matters or things where the rights in future might be bound." But the words the legislature has used are "such like matters," thereby qualifying them to such matters or things as are precedently mentioned.

By s. 8 of 54-55 Vict., c. 26, the provision in the *Exchequer Court Act* was made to read as it now does, Parliament adopting substantially the wording indicated as not implying a restriction, namely:

- (b) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands, tenements or annual rents, or to any question affecting any patent of invention, copyright, trade mark or industrial design, or to any matter or thing where rights in future might be bound.

But concerning the jurisdiction of this Court, the amendment made two years later (56 Vict., c. 29) consisted in substituting the words "and other" for the words "or such like". It is the provision as thus amended that was held to require the application of the *noscitur a sociis* rule in *O'Dell v. Gregory*<sup>3</sup>, a decision which was followed in a long line of cases culminating in *Greenlees v. Attorney General of Canada*<sup>4</sup>.

In view of the difference between the two enactments it seems clear that these decisions can have no application to the instant case. It is moreover obvious that the rights in future of the appellant that are bound by the decision appealed from are substantial. As a result of the decision it is unlawful for it to conduct its business otherwise than subject to the prohibitions enacted in the *Combines Investigation Act*, whereas in the absence of such a decision it would be open to it to contend that as respects the storage or transportation of household goods, it is not subject to such prohibitions. It is also apparent that in those matters it is subject to the exercise of the powers of investigation

<sup>2</sup> (1889), 16 S.C.R. 189 at 194-5.      <sup>3</sup> (1895), 24 S.C.R. 661.

<sup>4</sup> [1946] S.C.R. 462, [1947] 1 D.L.R. 798.

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contemplated in that Act without any possibility of contending that these matters are not within its proper scope.

On the merits, the argument submitted by appellant is essentially that household goods are not "articles" within the definition of that word in para. (a) of s. 2 of the *Combines Investigation Act*:

(a) "article" means an article or commodity that may be the subject of trade or commerce.

It is contended that the general intention of the Act is that it shall apply only to commodities in the stream of commerce. The fatal weakness of this argument is that it really invites us to construe the definition as if it read "that is" instead of "that may be". It is true that the result of the literal reading is that the definition embraces every conceivable commodity but it is no reason for departing from the clear meaning of the Act. If Parliament had intended that commodities that are actually in the stream of commerce only would be articles within the meaning of the definition, we would expect to find the word "is" instead of "may be". There is no basis for not presuming that the wording used was intended precisely to make it certain that commodities not actually in the stream of commerce would be covered.

Our attention was drawn to s. 33 of the *National Transportation Act* (14-15-16 Eliz. II, c. 69) whereby provision is made for the filing of a tariff of tolls by an association of motor vehicle operators on their behalf subject to the authority of the Canadian Transport Commission. Nothing in that provision, which is not yet in force, lends any support to the contention that the *Combines Investigation Act* should be construed otherwise than as above indicated.

The appeal fails and must be dismissed with costs.

*Appeal dismissed with costs.*

*Solicitors for the appellant: Gowling, MacTavish, Osborne & Henderson, Ottawa.*

*Solicitor for the respondent: D. S. Maxwell, Ottawa.*